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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Honorable John D. Dingell  
Chairman, Committee on  
Energy & Commerce  
House of Representatives  
2125 Rayburn Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of November 15 concerning the Commission's Notice of Proposed Rule Making in PP Docket No. 93-253 concerning competitive bidding. As you requested, a copy of your letter has been included in the docket of this proceeding and is available to the public.

In your letter you raised two concerns. First, you questioned the proposal in paragraph 29 of the Notice that "licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber ... be subject to competitive bidding." While I do not wish to prejudge the Commission's decision on this issue, you should know that the overwhelming majority of comments on the Notice are consistent with your interpretation.

Second, you questioned the proposal in paragraph 156 of the Notice that Big LEOs be subject to competitive bidding if mutually exclusive applications are filed. Let me assure you that this proposal in no way indicates a lack of commitment by the Commission to work with industry to avoid mutual exclusivity in the Big LEO proceeding.

I appreciate your guidance in interpreting the legislation which the Notice seeks to implement, and am confident that your input will be carefully considered in the Commission's deliberations. Thank you again for your letter.

Sincerely,

Reed E. Hundt  
Chairman

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based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.

Paragraphs 28 and 29 discuss the Commission's proposal "that licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding". Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate.

My second concern relates to the proposed "Big LEO" satellite systems in the Mobile Satellite Service ("MSS"). It is clear to me that these systems will advance important U.S. policy goals, including maintaining America's lead in important technologies and the expansion of the existing telecommunications infrastructure. They will also promote the creation of new jobs throughout the industry and enhance the global competitiveness of the United States in mobile communications technology.

I am concerned, however, that the Commission's limited discussion of the treatment of the pending Big LEO applications in the competitive bidding Notice is an indication that the Commission may be misinterpreting the intent of Congress with respect to licensing Big LEO systems. In its Notice, it appears that the Commission has failed to take notice of important statutory language in the new law, as well as relevant legislative history, which requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in pending application and licensing proceedings, and thereby avoid auctions and lotteries.

As a general proposition, by granting to the Commission the authority to assign licenses by auction, it was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations.

The Committee expects the Commission to continue to exercise its responsibilities to determine how spectrum should be used in the public interest and who are the best qualified to undertake that use.

To underscore that auctions are not a substitute for reasoned decision-making, the new statute specifies (at Section

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309(j)(6)(E)) that the Commission is not to abandon its traditional methods of avoiding mutual exclusivity. Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding.

A brief review of the relevant legislative history should assist the Commission in its deliberations in both the competitive bidding docket and the Big LEO proceeding. In the original House Report language (House Report No. 103-111, at p. 258) from which this statutory subsection was drawn, the Committee stated:

In connection with application and licensing proceedings, the Commission should, in the public interest, continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity. The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point. The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate [emphasis added].

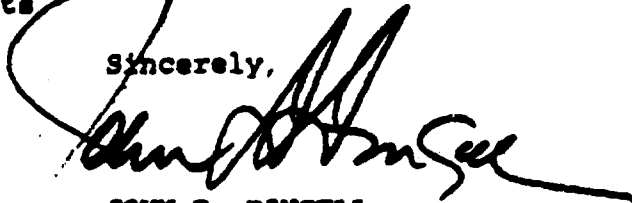
In light of the provisions of the House Report, the final statutory language signed by the President, and the presence of viable spectrum sharing plans, such as the one contained in Motorola Satellite's and Loral Qualcomm's joint submission, it is clear that the Commission has an obligation to attempt to avoid mutual exclusivity among qualified applicants in the Big LEO proceeding. While the contents of paragraph 156 of the Notice may provide a healthy incentive for the various applicants to conclude their negotiated rulemaking successfully, I trust that the Commission is aware of its own responsibilities in this regard.

As I noted at the outset, the Commission's Notice represents an extraordinary effort in a very tight timeframe, and I congratulate you for the job that you have done. I ask that a copy of this letter be made part of the Commission's record in

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this proceeding, and hope that it is useful to you as the Commission deliberates on the appropriate uses of its competitive bidding authority. If I or the Committee staff can be of any assistance to you, please do not hesitate to contact me. I look forward to reviewing your decision, and to receiving your response to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", with a long, sweeping horizontal stroke extending to the right.

JOHN D. DINGELL  
CHAIRMAN